# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 1[illegible] 9.

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THE COUNTY OF ST. CLAIR, PLAINTIFF IN ERROR,

vs.

THE INTERSTATE SAND AND CAR TRANSFER COMPANY.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

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FILED DECEMBER 14, 1908.

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(15,350.)

(18,350.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 16, 1901.

1 UNITED STATES OF AMERICA, ss:

The President of the United States to the judges of the circuit court of the United States for the southern district of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you between The County of St. Clair, plaintiff, and The Interstate Sand and Car Transfer Company, defendant, a manifest error hath happened, to the great damage of the said The County of St. Clair as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

The Seal of the Circuit Court of the United States for the South'n Dist. Ill.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 4th day of November, in the year of our Lord one thousand nine hundred and one and of our Independence the one hundred and twenty-sixth year.

JAMES T. JONES,
*Clerk Circuit Court U. S., South. Dist. Ills.*

Filed Nov. 4th 1901.
JAMES T. JONES, *Clerk.*

2 Pleas in the circuit court of the United States of America for the southern district of Illinois held at the city of Springfield, in said district, before the Hon. J. Otis Humphrey, district judge of said district, and in the absence of the Hon. William A. Woods, the Hon. James G. Jenkins, and the Hon. Peter S. Grosscup, judges of the seventh judicial circuit, on Monday, the sixth day of May, at the January term of said court, in the year of our Lord one thousand nine hundred and one, and of our Independence the one hundred and twenty-fifth year.

COUNTY OF ST. CLAIR
vs.
INTERSTATE SAND & CAR TRANSFER COMPANY. } Debt.

Be it remembered that heretofore to wit on the first day of January in the year of our Lord one thousand nine hundred and one

came the Interstate Sand and Car Transfer Company by Messrs. George R. Lockwood and Edward C. Kramer its attorneys and filed in the office of the clerk of the circuit court of the United States for the southern district of Illinois, a certified record from the circuit court of St. Clair county Illinois in a certain case wherein The County of St. Clair is plaintiff and The Interstate Sand & Car Transfer Company is defendant, which certified record is as follows to wit:

STATE OF ILLINOIS, } ss:
*St. Clair County,* }

At a regular term of the circuit court within and for the county of St. Clair and State of Illinois begun and held at the court-house in the city of Belleville in said county of St. Clair on Monday the 10th day of September A. D. 1900 it being the second Mon-
3 day of September A. D. 1900 according to the act of the General Assembly by the Hon. Martin W. Schaefer, one of the judges of the third judicial circuit of the State of Illinois, of which the said county of St. Clair forms a part the following proceedings were had to wit:

Present: Honorable Martin W. Schaefer, judge; John Kickham, sheriff; Martin D. Baker, State's attorney; Thomas May, Jr., clerk.

Be it remembered that the following is a true copy of the præcipe for summons filed in this cause to wit:

STATE OF ILLINOIS, } ss:
*St. Clair County,* }

In the Circuit Court, September Term, A. D. 1900.

THE COUNTY OF ST. CLAIR
*vs.*
THE INTERSTATE SAND AND CAR TRANSFER COMPANY. } Debt, $242,000; Damages, $242,000.

The clerk of said court will please issue summons as above.

MARTIN D. BAKER,
CHARLES W. THOMAS,
*Pl'ff's Attorneys.*

Filed July 17th, 1900.
THOMAS MAY, JR.,
*Circuit Court Clerk, St. Clair Co., Ills.*

Be it remembered that the following is a true copy of the debt summons issued in this cause, to wit:

STATE OF ILLINOIS, } ss:
*St. Clair County,* }

The People of the State of Illinois to the sheriff of St. Clair county, Greeting:

We command you to summon the Interstate Sand and Car Transfer Company if it can be found in your county to be and appear in

the circuit court of St. Clair county on the first day of the
4 next term thereof, to be holden at the court-house, in the city of Belleville, in said county of St. Clair, on the second Monday of September, 1900; then and there to answer unto the County of St. Clair of a plea that it render unto it the sum of two hundred and forty-two thousand dollars, which it owe- to it and unjustly detain- from it to its damage as it say- of the sum of two hundred and forty-two thousand dollars and not to fail, under penalty of what the law directs. And this writ you shall have at our said court, with your return endorsed thereon.

Witness: Thomas May Jr., clerk of the circuit court, and the seal thereof affixed, this 17th day of July A. D. one thousand nine hundred.

[SEAL.] THOMAS MAY, JR., *Clerk.*

*Sheriff's Return.*

STATE OF ILLINOIS, } ss:
*County of St. Clair,* }

Within summons duly served upon the Interstate Sand and Car Transfer Company by reading and at the same time delivering a true copy of the within to Captain Wm. McClellan, captain of the boat Wm. K. Kavanaugh this 18th day of July A. D. 1900, the president or no other officer of the said company being found in my county.

JOHN KICKHAM, *Sheriff,*
By J. J. KANE, *Deputy.*

Filed July 23 1900.

THOMAS MAY, JR.,
*Circuit Clerk, St. Clair Co., Ills.*

Be it remembered that the following is a true copy of a declaration filed in this cause to wit:

STATE OF ILLINOIS, }
*County of St. Clair.* }

In the Circuit Court, to the January Term, A. D. 1901.

THE COUNTY OF ST. CLAIR }
vs. } Debt.
THE INTERSTATE SAND & CAR TRANSFER COMPANY. }

The County of St. Clair in the State of Illinois, by Charles
5 W. Thomas, its attorney, complains of the Interstate Sand & Car Transfer Company, a corporation of the State of Missouri, defendant, of a plea of debt: for that whereas on, to wit, the 24th day of October A. D. 1896, the said defendant did establish a certain ferry for the conveyance of property for profit and hire across the Mississippi river and within the limits of said county, and having, on, to wit: the date aforesaid established said ferry, did

keep and use the same and has continued to keep and use the same from thence hitherto, without any license from the county board of plaintiff so to do, contrary to the statute in such cases made and provided.

And plaintiff avers that the said defendant in order to keep and use its said ferry at the time of its establishment as aforesaid, constructed and caused to be built a permanent landing place, with certain cradles and roadways thereto, within the limits of said county, and has from thence hitherto maintained the same, by means whereof, as well as by means of certain steamboats and barges then and from thence hitherto used for that purpose by the defendant, it, the said defendant, was enabled to and did, at various times and continuously since the day last aforesaid, ferry for profit and hire property, to wit: certain railroad cars from said county across the Mississippi river aforesaid and from the west bank of said river to the said county, and has so ferried said cars within the time aforesaid to the number of to wit: eighty thousand railroad cars across said river without any license from the county board of the plaintiff so to do, whereby and by virtue of the statute in such cases made and provided, penalties have accrued to the plaintiff in the sum of three dollars for each one of said cars so ferried, being in all a large sum of money to wit: the sum of two hundred and forty thousand dollars.

II.

And for that whereas also, the defendant on, to wit: the 24th day of October, A. D. 1896, did establish and from thence hitherto hath kept and used a certain other ferry, to wit: the ferry in the
6 foregoing count mentioned, upon the east bank of the Mississippi river and within the limits of said county, without any license from the county board of plaintiff so to do. And plaintiff avers that the said defendant, in order to keep and use its said ferry at the time of its establishment as aforesaid, constructed and caused to be built a permanent landing place with certain cradles and roadways thereto, within the limits of said county and subject to taxation in said county and State; by means whereof as well as by means of certain steamboats and barges, then and from thence hitherto used for that purpose, by the defendant, it, the said defendant, was enabled to and did, at various — and continuously since the day first aforesaid, ferry for profit and hire, property, to wit: certain railroad cars loaded with various kinds of personal property and freight from said county across the Mississippi river aforesaid and from the west bank of said river to said county and has so ferried said loaded cars within the time aforesaid, to the number of to wit, eighty thousand across said river; whereby and by virtue of the statute in such cases made and provided, penalties have accrued to the plaintiff in the sum of three dollars for each one of said loaded cars, being in all a large sum of money, to wit the sum of two hundred and forty thousand dollars.

And the defendant, though requested, has not paid the plaintiff the said sums in the counts hereof mentioned or either of them, or

any part thereof, but refuses so to do, to the plaintiff's damage of two hundred and forty-two thousand dollars and therefore it brings its suit, etc.

THE COUNTY OF ST. CLAIR,
By CHARLES W. THOMAS,
*Its Attorney.*

Filed Oct. 18 1900.

THOMAS MAY, JR.,
*Circuit Clerk, St. Clair Co., Ills.*

Be it remembered that the following is a true copy of the petition for the removal of this cause to the United States circuit court filed in this cause to wit:

7 STATE OF ILLINOIS, }
*County of St. Clair.* }

In the St. Clair County Circuit Court, to the September Term, A. D. 1900.

THE COUNTY OF ST. CLAIR
*vs.*
THE INTERSTATE SAND & CAR Transfer Company. } Debt. Petition for Removal.

To the honorable judge of the circuit court of the county of St. Clair, State of Illinois:

Your petitioner, The Interstate Car Transfer Company, the defendant herein, and sued under the name and style of the Interstate Sand and Car Transfer Company, respectfully shows unto your honor,

1st. That this is an action now pending in the circuit court of St. Clair county in which The County of St. Clair is plaintiff and your petitioner, The Interstate Car Transfer Company, is defendant.

2nd. That the time fixed by the laws of this State or the rules of this court within which defendant is required to plead answer or demur to the declaration in this cause has not yet expired.

3rd. That this action is of a civil nature and is founded upon an alleged liability of said defendant to pay said plaintiff for establishing, keeping and using a certain ferry upon the east bank of the Mississippi river and within the limits of the said county of St. Clair without a license from the county board of said county so to do, and whereby and by virtue of the statute in such cases made and provided, penalties have accrued to the plaintiff to the amount of two hundred and forty thousand — ($240,000) and that the matter in dispute exceeds, exclusive of interest and costs, the sum of $2,000.00 as appears by the declaration and papers filed in this case.

4th. That this action involves a controversy wholly between citizens of different States; that the plaintiff resided at the time of the commencement of this action, and still resides, in the State of

8 Illinois, and that the said plaintiff was at the commencement of this action and still is a citizen of the State of Illinois; that your petitioner, The Interstate Car Transfer Company, is a corporation organized and existing under the laws of the State of Missouri, and at the time of the commencement of this action had and still has, its principal place of business in the city of St. Louis and State of Missouri, and that said defendant your petitioner, The Interstate Car Transfer Company, was at the commencement of this action and still is, a citizen of the State of Missouri, and is not a citizen of the State of Illinois.

5th. That your petitioner offers herewith a bond with good and sufficient surety for its entering into the circuit court of the United States for the southern district of Illinois on the first day of its next session a copy of the record in this action, and for paying all costs that may be awarded by the said circuit court, if said court shall hold that this action was wrongfully or improperly removed hereto.

Wherefore your petitioner prays that the said bond be approved and that by the order of this court said action be removed into the circuit court of the United States for the southern district of Illinois and that this court proceed no further in this action.

THE INTERSTATE CAR TRANSFER COMPANY,
By WM. K. KAVANAUGH, *President.*

STATE OF MISSOURI, }
*City of St. Louis,* } ss:

Wm. K. Kavanaugh, after being duly sworn, on his oath says that he is the president of The Interstate Car Transfer Company, the above-named defendant, and that the foregoing petition is true.

WILLIAM K. KAVANAUGH.

Sworn to and subscribed before me this twenty-fifth day of October, A. D. 1900, by the above-named William K. Kavanaugh and I certify that by the laws of the State of Missouri I am authorized to administer oaths. Witness: my hand and notarial seal the day and year aforesaid. My commission expires February 12th, 1904.

[SEAL.]

JANE M. WHITELAW,
*Notary Public.*

9 Be it remembered that the following is a true copy of the bond for the removal of this cause into the United States circuit court in this cause to wit:

*Bond for Removal.*

Know all men by these presents that the Interstate Car Transfer Company, as principal and Edward C. Kramer as surety, are holden and firmly bound unto the County of St. Clair, in the penal sum of five hundred dollars ($500) for the payment whereof, well and truly to be made to the said County of St. Clair, we hereby bind ourselves

our heirs, executors, administrators and assigns firmly by these presents.

In witness whereof we have hereunto set our hands and seals this 27th day of October A. D. 1900.

The condition of the above obligation is such that whereas, the said Interstate Car Transfer Company has petitioned the circuit court of St. Clair county, Illinois, for the removal of a certain cause therein pending wherein the said County of St. Clair is plaintiff and the said Interstate Car Transfer Company is defendant, to the United States circuit court for the southern district of Illinois.

Now if the said Interstate Car Transfer Company shall enter into the said circuit — of the United States for the southern district of Illinois on the first day of its next term, a copy of the record in said cause of action, and shall well and truly pay all costs that may be awarded by the said circuit court of the United States for the southern district of Illinois, if said court shall hold that said within cause of action was wrongfully or improperly removed thereto, then this obligation to be void, otherwise to remain in full force and effect.

THE INTERSTATE CAR TRANSFER COMPANY,

[INCORPORATE SEAL.] By WM. K. KAVANAUGH. [SEAL.]
EDWARD C. KRAMER. [SEAL.]

10 STATE OF ILLINOIS, } ss:
*County of St. Clair,* }

Edward C. Kramer, being duly sworn, says that I reside in the county of St. Clair, State of Illinois, and am a freeholder in the State of Illinois and within the southern district of Illinois, and worth the sum of five hundred dollars over and above all property exempt from sale or execution.

EDWARD C. KRAMER.

Subscribed and sworn to before me this 27th day of October A. D. 1900.

[NOTARIAL SEAL.] L. E. SCHAEFER,
*Notary Public.*

Filed Oct. 29, 1900.

THOMAS MAY, JR.,
*Circuit Clerk St. Clair Co., Ills.*

Be it remembered that the following is a true copy of the order of court rendered at the September term A. D. 1900, in this cause to wit:

THE COUNTY OF ST. CLAIR
*vs.* } Debt.
INTERSTATE SAND AND CAR TRANSFER COMPANY.

On the 10th day of October 1900 on motion the court orders that this cause be continued for want of declaration.

THE COUNTY OF ST. CLAIR
*vs.*
INTERSTATE SAND AND CAR TRANSFER CO. } Debt.

And now on this 29th day of October A. D. 1900 come the parties by their respective attorneys and on motion the order of continuance heretofore made in this cause is by the court set aside by consent of parties thereupon on motion of defendant's attorneys and it appearing to the court that the defendant had filed its petition, motion and bond in this cause, and the court upon examination of said petition and bond orders that said bond be approved and that this
11 cause be and the same is hereby removed into the United States circuit court in and for the southern district of Illinois and the clerk of this court is hereby ordered to transmit a certified copy of the record and proceedings in this cause to the said United States circuit court in and for the southern district of Illinois according to the statute in such case made and provided.

STATE OF ILLINOIS,
*St. Clair County,* } ss:

I, Thomas May, Jr., clerk of the circuit court of St. Clair county, in the State aforesaid, do hereby certify the above and foregoing to be a true and correct copy of the præcipe for summons, the summons issued, the declaration, and the petition and bond for the removal of said cause into the United States circuit court for the southern district of Illinois and the orders of court as the same appear on file and of record in the above cause in my office in a certain cause lately pending in said court, on the law side thereof, wherein The County of St. Clair is plaintiff and The Interstate Sand & Car Transfer Company, defendant. And I further certify that I am the custodian of said records.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Belleville, this eighth day of December, A. D. 1900.

[SEAL.]

THOMAS MAY, JR., *Clerk,*
By —— ——, *Deputy.*

(Indorsed:) Filed January 1, 1901. James T. Jones, clerk.

Afterwards, to wit, on the 7th day of January, in the year last aforesaid, came again the defendant, by its attorneys, and filed in the office of the clerk of the circuit court of the United States for the southern district of Illinois its demurrer to the declaration herein, as follows, to wit:

UNITED STATES OF AMERICA, *Southern District of Illinois,* } ss:

12 In the United States Circuit Court for the Southern District of Illinois, to the January Term, A. D. 1901.

THE COUNTY OF ST. CLAIR
vs.
THE INTERSTATE SAND & CAR TRANSFER COMPANY. } Debt.

And the defendant by George R. Lockwood and Edward C. Kramer, its attorneys, comes and defends, etc., when, etc., and says that the said declaration and each count thereof, and the matters therein contained in manner and form as the same are above set forth are not sufficient in law for the plaintiff to maintain its aforesaid action, and that it, the defendant, is not bound by law to answer the same, and this it is ready to verify: Wherefore, for want of a sufficient declaration in this behalf the defendant prays judgment, and that the plaintiff may be barred from maintaining its aforesaid action, etc.

GEORGE R. LOCKWOOD,
EDWARD C. KRAMER,
*Attorneys for Defendant.*

(Indorsed:) Filed January 7, 1901. James T. Jones, clerk.

Then, afterwards, to wit, on the 16th day of April, in the January term of said circuit court of the United States, in the year last aforesaid, the following proceedings were had in said court in said case and entered of record to wit:

COUNTY OF ST. CLAIR
vs.
INTERSTATE SAND & CAR TRANSFER COMPANY. } Debt.

This day this case came on to be heard on *on* demurrer of defendant to the declaration herein, and the court having heard argument of counsel thereon, takes the same under advisement.

Now, afterwards, to wit, on the 6th day of May, in the January term of said court, in the year last aforesaid, the following further proceedings were had in said court in said case and entered of record to wit:

13 COUNTY OF ST. CLAIR
vs.
INTERSTATE SAND AND CAR TRANSFER COMPANY. } Debt.

And now on the 6th day of May A. D. 1901 came the parties by their respective attorneys and the court being now fully advised in the premises sustains the defendant's demurrer to the plaintiff's

declaration, and thereupon the plaintiff elects to stand by its declaration and refuses to amend or in any manner change the same and it is therefore ordered, considered and adjudged by the court that the plaintiff pay the costs of this suit to be taxed.

Afterwards to wit on the 4th day of November in the June term of said court in the year last aforesaid the following further proceedings were had in said court in said case and entered of record to wit:

THE COUNTY OF ST. CLAIR
vs.
THE INTERSTATE SAND AND CAR TRANSFER COMPANY. } Debt.

And now on this 4th day of November A. D. 1901 the same being one of the days of the June term A. D. 1901 of the said circuit court of the United States for the southern district of Illinois comes the said plaintiff by Charles W. Thomas its attorney, and presents to the court its petition for a writ of error in said cause from the Supreme Court of the United States and also its assignment of errors therein and tenders its bond in the penal sum of five hundred dollars with Charles W. Thomas as surety conditioned that it will prosecute its said writ of error with effect, and answer all costs if it shall fail to make good its plea. And thereupon it is ordered that the said writ of error be granted and the said bond approved and that a citation be issued as provided by law.

14 *Petition for Writ of Error.*

In the Circuit Court of the United States for the Southern District of Illinois, June Term, A. D. 1901.

THE COUNTY OF ST. CLAIR
vs.
THE INTERSTATE SAND AND CAR TRANSFER COMPANY. } Debt.

The said County of St. Clair, plaintiff, in the above-entitled cause, feeling itself aggrieved by the judgment entered against it for costs on the 6th day of May A. D. 1901, comes now by Charles W. Thomas, its attorney, and prays for an order allowing said plaintiff to prosecute a writ of error to the honorable the Supreme Court of the United States under and in pursuance of the laws in that behalf made and provided, and also that an order be made fixing the amount of security if any which the said plaintiff shall give and furnish upon said writ of error. And your petitioner will ever pray etc.

CHARLES W. THOMAS,
*Attorney for Plaintiff.*

(Indorsed:) Filed Nov. 4 1901. James T. Jones, clerk.

*Assignment of Errors.*

In the Circuit Court of the United States for the Southern District of Illinois.

THE COUNTY OF ST. CLAIR
*vs.*
THE INTERSTATE SAND AND CAR TRANSFER COMPANY. } Debt.

And now comes the said plaintiff and says that in the record and proceedings aforesaid in said cause there is manifest error in this:

First. The circuit court erred in sustaining the demurrer of the defendant to the plaintiff's declaration.

Second. The circuit court erred in giving and entering judgment against the plaintiff for costs.

15 Wherefore the said plaintiff and plaintiff in error prays that the said judgment of the said circuit court may be reversed and held for naught.

CHARLES W. THOMAS,
*Attorney for Plaintiff.*

(Indorsed:) Filed November 4, 1901, James T. Jones, clerk.

*Bond on Writ of Error.*

In the Circuit Court of the United States for the Southern District of Illinois.

THE COUNTY OF ST. CLAIR
*vs.*
THE INTERSTATE SAND AND CAR TRANSFER COMPANY. } Debt.

Know all men by these presents—that the County of St. Clair as principal and Charles W. Thomas as surety are held and firmly bound to the Interstate Sand and Car Transfer Company in the penal sum of five hundred dollars ($500) to the payment of which well and truly to be made we bind ourselves and our legal representatives jointly, severally and firmly by these presents.

Sealed with our seals and dated this — day of November A. D. 1901.

Whereas the above-named County of St. Clair has sued out a writ of error from the Supreme Court of the United States to reverse the judgment in the above-entitled cause rendered by the circuit court of the United States for the southern district of Illinois. Now therefore the condition of this obligation is such that if the above-named County of St. Clair shall prosecute said writ with effect and answer

all costs if it shall fail to make good its plea then this obligation shall be void, otherwise to remain in full force and virtue.

THE COUNTY OF ST. CLAIR,
[SEAL.] By WALTER EYMAN,
*Chairman of the Board of Supervisors.*
CHARLES W. THOMAS. [SEAL.]

Attest: GEO. K. THOMAS,
*County Clerk.*

Approved:
HUMPHREY, *Judge.*

(Indorsed:) Filed November 4, 1901, James T. Jones, clerk.

16 UNITED STATES OF AMERICA, } ss:
*Southern District of Illinois,* }

I, James T. Jones, clerk of the circuit court of the United States in and for the southern district of Illinois, do hereby certify that the foregoing is a true and complete copy of the papers filed and proceedings thereon had in a certain case wherein The County of St. Clair is plaintiff and The Interstate Sand and Car Transfer Company is defendant, as truly and completely as the same appear of file and record in my office.

In witness whereof I have hereunto set my hand and seal of said court at Springfield in said district this twenty-fifth day of November in the year of our Lord one thousand nine hundred and one and of our Independence the one hundred and twenty-sixth year.

{ The Seal of the Circuit Court of the United States for the South'n Dist. Ill. }

JAMES T. JONES, *Clerk.*

17 UNITED STATES OF AMERICA, ss:

The President of the United States to the Interstate Sand and Car Transfer Company:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, to be held at the city of Washington, within thirty days from the date of this writ, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of Illinois wherein The County of St. Clair is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this fourth day of November A. D. 1901 and of the Independence of the United States the one hundred and twenty-sixth year.

J. O. HUMPHREY, *Judge.*

Service of the above citation and a receipt of a copy thereof admitted this 5th day of November A. D. 1901.

GEO. R. LOCKWOOD.
JOHN F. LEE.

[Endorsed:] The County of St. Clair plaintiff in error *vs.* The Interstate Sand and Car Transfer Company defendant in error. Record.

Endorsed on cover: File No. 18,350. S. Illinois C. C. U. S. Term No. 497. The County of St. Clair, plaintiff in error, *vs.* The Interstate Sand & Car Transfer Company. Filed December 11th, 1901.